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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5944

DATE COMPLAINT FILED: October 3, 2007

DATE OF NOTIFICATION: October 9, 2007

LAST RESPONSE RECEIVED: January 22, 2008

DATE ACTIVATED: December 3, 2007

EXPIRATION OF SOL: June 11, 2012

COMPLAINANT:

Sumter Electric Cooperative, Inc.

RESPONDENTS:

International Brotherhood of Electrical Workers,
Local 108

International Brotherhood of Electrical Workers,
Local 108 PAC Fund

RELEVANT STATUTES:

2 U.S.C. § 431(4)(B)

2 U.S.C. § 441b(b)(3)

11 C.F.R. § 102.6(b)(1)

11 C.F.R. § 114.5(a)

11 C.F.R. § 114.5(g)

INTERNAL REPORTS CHECKED:

Commission Indices

FEDERAL AGENCIES CHECKED:

Internal Revenue Service

I. INTRODUCTION

Sumter Electric Cooperative, Inc. ("SECO") filed a complaint alleging that International Brotherhood of Electrical Workers, Local 108 ("Local 108") and its separate segregated fund ("SSF"), International Brotherhood of Electrical Workers, Local 108 PAC Fund ("Local 108 PAC"), violated the Federal Election Campaign Act of 1971, as amended, ("the Act"), by improperly soliciting SECO employees to make contributions.¹

¹ SECO is a respondent in MUR 5931, in which Local 108 filed a complaint alleging that SECO had improperly solicited SECO employees and coerced those employees, who had terminated support for SECO's political committee, into resuming their contributions to the committee. The response contends that SECO's complaint in this matter is "nothing more than retaliation" for the complaint filed by Local 108 in MUR 5931. Response at 1.

1 According to the complaint, Respondents failed to include notices regarding the
2 voluntariness of contributions in a June 11, 2007 letter soliciting contributions and in its payroll
3 deduction authorization forms, as specified in 2 U.S.C. § 441b(b)(3) and 11 C.F.R. § 114.5(a).
4 In addition, the complaint alleges that, because Respondents sent the June 11, 2007 letter to both
5 members and non-members of the union, they solicited contributions beyond Local 108 PAC's
6 restricted class in violation of 2 U.S.C. § 441b(b)(4)(A)(ii) and 11 C.F.R. § 114.5(g)(2).
7 Respondents contend that Local 108 PAC is not a federal political committee and therefore did
8 not violate the Act.

9 As more fully set forth below, Local 108 PAC does not appear to be a federal political
10 committee. Thus, we recommend that the Commission: 1) find no reason to believe that Local
11 108 and Local 108 PAC violated 2 U.S.C. § 441b(b)(3) and 11 C.F.R. § 114.5(a) by failing to
12 inform solicitees about the political purpose of the SSF and the right to refuse to contribute
13 without reprisal; and 2) find no reason to believe that Local 108 and Local 108 PAC violated 2
14 U.S.C. § 441b(b)(4)(A)(ii) and 11 C.F.R. § 114.5(g)(2) by soliciting individuals outside of its
15 restricted class.

16 **II. FACTUAL BACKGROUND**

17 **A. Local 108 and Local 108 PAC**

18 SECO is an electric distribution cooperative that was incorporated in 1938 and operates
19 in Central Florida. Local 108 is a union that represents approximately 171 of the 379 individuals
20 who are employed with SECO. Local 108 is affiliated with the International Brotherhood of
21 Electrical Workers ("IBEW").

22 Local 108 has a state political committee, Local 108 PAC, that is registered with the
23 Florida Department of State but not with the Commission. Local 108 PAC collects contributions
24 from members through a payroll deduction system in which members fill out forms authorizing

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1 SECO to deduct contributions to Local 108 PAC directly from their paychecks. Respondents
2 assert that Local 108 and its PAC do not collect and transmit contributions to the SSF of the
3 national IBEW organization,² and that Local 108 PAC primarily makes contributions to state and
4 local candidates. See Response at 2; Declaration of R. Floyd Suggs at ¶¶ 4, 6-7.

5 While Florida Department of State records confirm that the vast majority of
6 disbursements made by Local 108 PAC were to state and local candidates, it appears that Local
7 108 PAC made three payments to federal committees associated with national or local IBEW
8 organizations as follows:³

DATE	AMOUNT	FEDERAL POLITICAL COMMITTEE
10/14/2004	\$1,000	IBEW COPE
07/07/2005	\$500	IBEW 728 ElectroPAC
08/03/2006	\$500	IBEW COPE

9 Respondents state that the 2006 check to IBEW COPE was deposited into IBEW COPE's
10 non-federal account. See Response at 2; Declaration of R. Floyd Suggs at ¶ 7. Because the
11 response did not address the payments made in 2004 and 2005 to IBEW COPE and IBEW 728
12 ElectroPAC, we sent a pre-RTB clarification letter to Respondents on January 7, 2008. In their
13 reply to the letter, Respondents represent that, while they do not know whether the 2004 and
14 2005 payments were deposited into the federal or non-federal accounts of these organizations,
15 they did not intend either payment to influence a federal election. See January 22, 2004 Letter
16 from Robert D. Kurnick, Attachment C. In particular, Respondents assert that the 2005 payment
17 was an earmarked contribution to the Florida Democratic Party. See *id.*

² The complaint and response identify this committee as IBEW PAC. Commission records, however, do not show that "IBEW PAC" is a registered political committee. Mostly likely, the complaint and response meant to refer to IBEW COPE, which is registered with the Commission as the separate segregated fund of the national IBEW organization.

³ See Florida Department of State, Division of Elections, Campaign Finance Database, available at <http://election.dos.state.fl.us>.

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1 IBEW COPE and IBEW 728 ElectroPAC did not report any of the payments from Local
2 108 PAC as contributions to their respective federal accounts, and our examination of
3 Commission records does not reveal that Local 108 PAC is a contributor to any other federal
4 political committee. Thus, it is unlikely that Local 108 PAC's funds were deposited into federal
5 accounts.

6 **B. June 11, 2007 Letter and Payroll Deduction Authorizations**

7 On June 11, 2007, Floyd Suggs, who is Business Manager and Financial Secretary of
8 Local 108, sent out a letter to SECO employees who were covered by the Collective Bargaining
9 Agreement, which apparently covers both union and non-union members. In this letter, Suggs
10 states, "... I encourage employees to contribute to the United Way through direct donations and
11 maintain political action through the union PAC Fund."⁴ Attachment A.

12 The complaint alleges that the statement in this letter encouraging employees to
13 "maintain political action through the union PAC Fund" constituted a solicitation for
14 contributions to the IBEW PAC through the Local 108 PAC and was required to include notices
15 of the political purpose of the SSFs and rights of union members to refuse to contribute without
16 reprisal. Moreover, the complaint alleges that the Respondents sent the solicitation letter to
17 employees who are not members of the union and explicitly urged all employees of SECO to
18 contribute. In addition, the complaint alleges that the payroll deduction cards completed by
19 employees to authorize SECO to deduct monthly contributions for Local 108 PAC, see
20 Attachment B, similarly were required to contain notices concerning the voluntariness of
21 contributions.

⁴ The complaint states that a number of SECO employees recently terminated their payroll deductions to Action Committee for Rural Electrification ("ACRE"), the political committee established for cooperatives such as SECO, in support of Local 108's protest of decisions made by SECO management. Suggs' letter appears to be in response to a memorandum distributed by management. This labor dispute is discussed in the First General Counsel's Report, at 3, in MUR 5931.

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1 **III. LEGAL ANALYSIS**

2 As a threshold matter, Respondents argue that Local 108 PAC is not a federal political
3 committee, and thus the alleged solicitations in the July 11, 2007 letter and the payroll deduction
4 cards were not subject to the Act. Under 2 U.S.C. § 431(4)(B), the term "political committee"
5 means "any segregated fund established under the provisions of section 441b(b)." In contrast to
6 section 431(4)(A), which provides that an organization becomes a political committee if it
7 receives contributions or makes expenditures in excess of \$1,000, a SSF has no monetary
8 threshold. See 2 U.S.C. § 431(4)(B).⁵ Thus, if Local 108 PAC spends any amount of money on
9 a federal election, it becomes a federal political committee under section 431(4)(B) and is subject
10 to the requirements of the Act.

11 Between January 2002 through February 2007, virtually all of Local 108's campaign
12 expenditures went to state and local committees and candidates, and the three payments to
13 political committees associated with national or local IBEW organizations appear to have been
14 non-federal. See *supra* p. 3. Given that the available information suggests that Local 108 PAC
15 is not a federal political committee, we need not specifically address the complainant's
16 solicitation allegations. Accordingly, we recommend that the Commission: 1) find no reason to
17 believe that respondents violated 2 U.S.C. § 441b(b)(3) and 11 C.F.R. § 114.5(a) by failing to
18 include in a solicitation notices concerning the voluntariness of contributions; and 2) find no
19 reason to believe that respondents violated 2 U.S.C. § 441b(b)(4)(A)(ii) and 11 C.F.R.
20 § 114.5(g)(2) by soliciting individuals outside of its restricted class.

⁵ In AO 2003-29 (National FOP PAC), the Commission determined that a non-federal committee became a federal committee once it transferred any amount of funds to its national affiliate, which had a registered federal committee. The Commission stated, "Under 2 U.S.C. § 431(4)(B), a separate segregated fund is a political committee regardless of the amount of contributions or expenditures it makes" AO 2003-29 at 6.

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IV. RECOMMENDATIONS

1. Find no reason to believe that International Brotherhood of Electrical Workers, Local 108 violated 2 U.S.C. § 441b(b)(3) and 11 C.F.R. § 114.5(a);
2. Find no reason to believe that International Brotherhood of Electrical Workers, Local 108 PAC Fund violated 2 U.S.C. § 441b(b)(3) and 11 C.F.R. § 114.5(a);
3. Find no reason to believe that International Brotherhood of Electrical Workers, Local 108 violated 2 U.S.C. § 441b(b)(4)(A)(ii) and 11 C.F.R. § 114.5(g)(2);
4. Find no reason to believe that International Brotherhood of Electrical Workers, Local 108 PAC Fund violated 2 U.S.C. § 441b(b)(4)(A)(ii) and 11 C.F.R. § 114.5(g)(2);
5. Approve the attached Factual and Legal Analysis;
6. Approve the appropriate letters;
7. Close the file.

Thomasenia P. Duncan
General Counsel

2-15-08

Date

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